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acid selected from the group consisting of L and V, in combination with Xaa18 wherein Xaa18 is a single amino acid selected from the group consisting of D and E.

In response to the restriction requirement, Applicant provisionally elects the group that corresponds to a nucleic acid molecule encoding a polypeptide of SEQ ID NO:15 wherein Xaa3 is I, Xaa7 is D, Xaa11 is Y, Xaa16 is L, and Xaa18 is D (Group I) although the restriction requirement is traversed.

The restriction requirement is traversed because MPEP 803.02 requires that if the members of a Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions. Here the members of the Markush group are sufficiently few in number (72) or so closely related that a search and examination of the entire claim can be made without serious burden. As specified in Example 4, results of protein alignments indicate that CDMP family members from several different species, including xenopus, human, chicken, bovine, and zebrafish, share a common amino acid sequence motif. The consensus sequence deduced from the protein alignment is SEQ ID NO:15 (see also Fig. 4). Of the 31 amino acid positions deduced from the protein alignment, all but 5 are occupied by identical amino acid residues for all of the isolates. Such extraordinary amino acid sequence conservation is indicative of a functional domain. ("Those of ordinary skill in the art will appreciate that such extraordinary amino acid sequence conservation is indicative of a functional domain." At page 11, lines 9-10.) Because the members of the Markush group are sufficiently few in number (72) or are so closely related, any serious burden on the examiner to conduct a search should be negated.

Nevertheless, the remainder of MPEP 803.02 deals with Markush-type generic claims which include a plurality of alternatively usable substances or members. In these applications, the examiner may require a provisional election of a single species prior to examination on the merits. The provisional election will be given effect in the event that the Markush-type claim should be found not allowable. Following election, the Markush-type claim will be examined fully with respect to the elected species and further to the extent necessary to determined patentability. If the Markush-type claim is not allowable over the prior art, examination will be limited to the Markush-type claim

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and claims to the elected species, with claims drawn to species patentably distinct from the elected species held withdrawn from further consideration.

On the other hand, should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended. If prior art is then found that anticipates or renders obvious the Markush-type claim with respect to a *nonelected species*, the Markush-type claim shall be rejected. Should applicant, in response to this rejection of the Markush-type claim, overcome the rejection, the Markush-type claim will be reexamined. The prior art search will be extended to the extent necessary to determine patentability of the Markush-type claim. In the event no prior art is found during the reexamination that anticipates or renders obvious the Markush-type claim, the claim will be allowed.

CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Respectfully submitted,

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